

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE,

v.

MONIR GEORGE,

Defendant.

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Cr. ID. No. 0805035299

Date Submitted: October 10, 2018

Date Decided: January 4, 2019

**ORDER**

**AND NOW TO WIT**, this 4<sup>th</sup> day of January, 2019, upon consideration of Defendant's Motion for Reconsideration;<sup>1</sup> the facts, arguments, and legal authorities set forth in Defendant's Motion; the statutory and decisional law; and the record in this case, **IT APPEARS THAT:**

1. On October 27, 2009, following a bench trial, the Defendant was found Guilty But Mentally Ill ("GBMI") on the following charges: Murder First Degree, Attempted Murder First Degree, Reckless Endangering First Degree, and three counts of Possession of a Firearm During the Commission of a Felony.<sup>2</sup> The Defendant was sentenced to life in prison plus an additional nineteen years.<sup>3</sup>

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<sup>1</sup> D.I. 182.

<sup>2</sup> D.I. 92.

<sup>3</sup> D.I. 104.

2. On July 5, 2018, the Defendant filed five motions.<sup>4</sup> Four of Defendant's motions request a new trial based on substantially similar grounds: the testimony of the State's firearms examiner, Carl Rone,<sup>5</sup> and to a lesser degree, the testimony of then Chief Medical Examiner, Dr. Richard T. Callery. Defendant's fifth motion is a Motion for Appointment of Counsel.

3. On August 28, 2018, all five motions were referred to a Superior Court Commissioner pursuant to 19 *Del. C.* § 512(b) and Superior Court Rule of Criminal Procedure 62 ("Rule 62"). On September 17, 2018, the Commissioner issued his "Report and Recommendations on Defendant's Motion for Postconviction Relief, Motion for an Evidentiary Hearing, Motion for Appointment of Counsel, Motion to set aside Conviction and Order a New Trial, and Motion of Exculpatory Evidence that Justifies a New Trial" ("Commissioner's Report and Recommendations").<sup>6</sup> The Commissioner's Report and Recommendations recommend that all of the Defendant's motions should be denied.

4. On September 25, 2018, the Defendant filed a "Letter of Intent to Appeal the Commissioner's Decision of September 17, 2018" ("Letter").<sup>7</sup> In his

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<sup>4</sup> D.I. 170, 171, 172, 173, 174.

<sup>5</sup> See Defendant's Motion for Reconsideration, D.I. 182 (stating "[t]he State's Indictment of Rone for Theft by False Pretense and Falsifying Business Records . . . goes to both Rone's professional reliability and honesty.").

<sup>6</sup> D.I. 178.

<sup>7</sup> D.I. 179.

Letter, the Defendant cites to *Fowler v. State*,<sup>8</sup> and states that his case is similar to the facts of *Fowler*. It is not.<sup>9</sup>

5. On October 10, 2018, the Defendant filed a Motion for Reconsideration<sup>10</sup> (“Motion”) reasserting that his case is similar to *Fowler*, and thus, his case should be remanded for a new trial.

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<sup>8</sup> 194 A.3d 16 (Del. 2018).

<sup>9</sup> See D.I. 179 (stating “[t]here is so much similarity with (*Fowler v. State*), which was reversed and remanded for a new trial.”). George’s case is not similar to *Fowler*. In *Fowler*, unlike here, there was a question as to who the shooter was. George shot and killed the victim at a church function in front of dozens of witnesses. There was photographic evidence showing George holding a gun to the victim’s head just prior to the shooting. In addition to eyewitness testimony and photographic evidence, by asserting the defense of GBMI, George admitted he killed the victim with a firearm. Rone’s testimony was not important in George’s case given the defendant’s admission and the abundant evidence of guilt. In *Fowler*, defendant Fowler was found guilty of one count of Attempted Murder First Degree, and numerous other associated offenses related to two separate shooting incidents: one that occurred on July 2, 2011, and one that occurred on July 31, 2011. Fowler was convicted in both of these incidents based on the testimony of Rone and eyewitnesses. Rone presented ballistic evidence that supported the State’s theory that Fowler was the shooter in both incidents. When Fowler challenged his conviction under Rule 61, the State discovered four *Jencks* violations relating to key witnesses. One of the *Jencks* violations called into question an eyewitness’s testimony that Fowler was the shooter in both incidents. The Superior Court held that the *Jencks* violations were harmless error stating “the fact that ballistic evidence linked the same weapon to both incidents makes the evidence of Fowler’s guilt in each separate incident mutually reinforcing.” *State v. Fowler*, 2017 WL 4381384, at \* 6 (Del. Super. 2017). Rone’s testimony concerning the ballistics was central to finding Fowler guilty. While the Superior Court’s ruling in *Fowler* was on appeal, Rone was arrested. After Rone’s arrest, the State argued to the Supreme Court that Rone’s credibility issues were not important “because [the] witness testimony, including that of the four witnesses for whom it failed to provide *Jencks* statements, was so strong.” *Fowler*, 194 A.3d at 17-18. The Supreme Court held that the “State’s argument is circular” because “the State is trying to have each strand of arguably compromised evidence excuse the other.” *Id.* at 24. The Supreme Court stated that “[w]hen the reliability of both strains of the key evidence the State used to prove Fowler was the shooter has been called into question, Rule 61 requires setting aside the conviction.” *Id.* at 18.

<sup>10</sup> D.I. 182.

6. The procedure for appealing a Commissioner's proposed findings of fact and recommendations is established by Superior Court Rule of Criminal Procedure 62(a)(5)(ii), which states:

Within 10 days after filing of a Commissioner's proposed findings of fact and recommendations under subparagraph (5), any party may serve and file written objections to the Commissioner's order which set forth with particularity the basis for the objections. The written objections shall be entitled "Appeal from Commissioner's Findings of Fact and Recommendations." A copy of the written objections shall be served on the other party, or the other party's attorney, if the other party is represented. The other party shall then have 10 days from service upon that party of the written objections to file and serve a written response to the written objections.

Further, the Court "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which an objection is made."<sup>11</sup> After conducting a *de novo* review, the Court "may accept, reject, or modify, in whole or in part, the findings of fact or recommendations made by the Commissioner."<sup>12</sup>

7. As previously mentioned, Defendant's Letter merely states that his case is similar to *Fowler*. This conclusory statement does not satisfy the requirement of Rule 62 that the basis for the objection be stated "with particularity."<sup>13</sup> Because the Letter does not comply with Rule 62, it will not

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<sup>11</sup> Super. Ct. Crim. R. 62(a)(5)(iv).

<sup>12</sup> *Id.*

<sup>13</sup> Super. Ct. Crim. R. 62(a)(5)(ii).

be considered as an appeal of the Commissioner's Report and Recommendations.

8. Defendant's Motion for Reconsideration was submitted too late to be considered as an appeal of the Commissioner's Report and Recommendations under Rule 62 and Rule 45.<sup>14</sup> Defendant's Motion is untimely as it exceeds the ten-day requirement to appeal under Rule 62, and the additional three days allotted under Rule 45.<sup>15</sup> Pursuant to Rule 62(b), the Defendant's Motion is subject to dismissal.<sup>16</sup>

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<sup>14</sup> See Super. Ct. Crim. R. 45(a) (stating that Saturdays and Sundays are excluded when calculating the Defendant's 10-day requirement to appeal); *see also* Super. Ct. Crim. R. 45(e) ("Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon that party and the notice or other paper is served by mail, 3 days shall be added to the prescribed period.").

<sup>15</sup> Defendant's appeal was due on or before October 4, 2018. Defendant's Motion for Reconsideration was filed on October 10, 2018, eighteen days after the filing of the Commissioner's Report and Recommendations on September 17, 2018. Further, the envelope containing the Defendant's Motion for Reconsideration was postmarked October 9, 2018, seventeen days after the Commissioner's Report and Recommendations were filed.

<sup>16</sup> See Sup. Ct. Crim. R. 62(b) ("A party seeking reconsideration of an order of a Commissioner under subparagraph (4) or appealing the findings of fact and recommendations of a Commissioner under subparagraph (5) who fails to comply with the provisions of this rule may be subject to dismissal of said motion for reconsideration or appeal.").

**NOW THEREFORE, IT IS HEREBY ORDERED** that the Commissioner's Report and Recommendations are **AFFIRMED**, and Defendant's untimely Motion for Reconsideration is **DISMISSED with prejudice.**



Jan. R. Jurden, President Judge

Original to Prothonotary:

cc: Monir George (SBI # 00618980)